

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ENTERTAINMENT SOFTWARE
ASSOCIATION, VIDEO SOFTWARE
DEALERS ASSOCIATION, and MICHIGAN No. 05-73634
RETAILERS ASSOCIATION ,

Plaintiffs,

v

HON. GEORGE CARAM STEEH
MAGISTRATE JUDGE PEPE

JENNIFER GRANHOLM, in her official
capacity as Governor of the State of Michigan;
MICHAEL A. COX, in his official capacity as
Attorney General for the State of Michigan, et
al, and KYM L. WORTHY, in her official
capacity as Wayne County Prosecuting
Attorney,

Defendants.

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**RESPONSE IN OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR
EXPEDITING BRIEFING SCHEDULE ON PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiffs, Entertainment Software Association, Video Software Dealers Association, and
Michigan Retailers Association have filed a multiple count Complaint, a multiple count First
Amended Complaint, and a Motion For Preliminary Injunction seeking to enjoin the

implementation of Public Act 108, which prohibits the dissemination, exhibition, or display of certain sexually explicit matter to minors. On September 26, 2005, Plaintiffs filed an emergency motion seeking to expedite the brief schedule and asserts that "it is imperative that the parties are able to brief the motion for preliminary injunction, have oral argument on the issue of the preliminary injunction, and the Court has adequate time to decide the motion prior to December 1, 2005. . . ." "PLAINTIFFS' EMERGENCY MOTION FOR EXPEDITED BRIEFING SCHEDULE ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION" at 4.

Plaintiffs have asked to truncate the briefing schedule for the State Defendants, Governor Jennifer Granholm and Attorney General Michael A. Cox, from 21 to 14 days. Defendants vigorously oppose Plaintiffs' efforts to impose an expedited timetable on the filing of their response brief, particularly when Plaintiffs could have filed their Motion for Preliminary Injunction sooner. For example, Plaintiffs filed their original complaint on September 21, 2005. They could have filed their motion for injunctive relief when they filed the complaint, particularly when their prayer for relief includes a request for preliminary injunction. See "PRAYER FOR RELIEF" at 23. Defendants should not be penalized for Plaintiffs' delay.

Plaintiffs' request to expedite Defendants' time for a response is particularly disturbing when it appears that their out of state and local law firms have spent at least eleven days obtaining signatures from nine industry representatives who filed official declarations¹ in

¹ The Declarations of the following individuals were obtained in support of Plaintiffs' Motion for Preliminary Injunction: Crossan R. Anderson, President of the Video Software Dealers Association, resident of Los Angeles California, was executed on September 23, 2005 (Tab 1); Ted Price, President and CEO of Insomniac Games, Inc. of Burbank, California, was executed on September 23, 2005 (Tab 2); Douglas Lowenstein, President of the Entertainment Software Association, was executed on September 26, 2005 (Tab 3); Jaime Borash, Senior Manager, Corporate Communications at Ubisoft Entertainment of Paris, France was executed on September 15, 2005 (Tab 4); Brad Carraway, Senior Global Brand Manager at THQ, which is headquartered in Los Angeles County, California was executed on September 16, 2005 (Tab 5); Ken Chan, a marketing specialist at Sony Computer Entertainment America Inc, which is based in Foster City, California (Tab 6); Rey Jimenez, Associate Publishing Project Manager at Capcom Entertainment, Inc., headquartered in Sunnyvale, California (Tab 7) was executed on September

support of Plaintiffs' request for injunctive relief. Those declarations include video games that must be reviewed and analyzed by Defendants. Given that Defendants must review and adequately respond to these materials, Defendants respectfully request that this Court exercise its discretion and deny Plaintiffs' request to shorten their time for filing a response. Defendants do not object to Plaintiffs' request to shorten their time for filing a reply to Defendants' response, from seven to five days.

Plaintiffs also request that this Court schedule oral argument on, October 31, 2005. Defendants would leave to the Court's discretion as to the scheduling of oral argument in this matter.

RELIEF REQUESTED

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs request to shorten their time for filing a response from twenty-one to fourteen days.

Respectfully submitted,

MICHAEL A. COX
Attorney General

s/ Denise C. Barton (P41535)
Denise C. Barton (P41535)
Assistant Attorney General
Public Employment, Elections
& Tort Defense Division

Dated: September 27, 2005

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the

20, 2005; Genevieve Waldman, Global Group PR Manager at Microsoft Corporation, headquartered in Redmond, Washington was executed on September 18, 2005 (Tab 8); David Rosen, Product Manager at Electronic Arts, which is headquartered in Redwood City, California (Tab 9) was entered on September 20, 2005.

following: Defendants Granholm and Cox's Response in Opposition to Plaintiffs' Emergency Motion for Expediting Briefing Schedule on Plaintiffs' Motion for Preliminary Injunction.

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